



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 01779-00

4 August 2000

EN2 SW [REDACTED] USN

Dear Petty Officer [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 17 May and 6 June 2000, copies of which are attached, and your letter dated 20 July 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions.

They found that the contested special evaluation was properly submitted at the time it was needed for an advancement cycle to reflect the withdrawal of your recommendation for advancement. In this regard, they noted that the preceding annual evaluation ending 15 March 1997, which had reported your misconduct but recommended you for advancement, had been submitted by a different reporting senior. Contrary to paragraph 2.b of the advisory opinion dated 17 May 2000, the Board did find that the adverse mark of "1.0" in block 36 ("Military Bearing/Character") was procedurally incorrect, in that it was based on an incident before the reporting period. However, they concluded that removing this mark, while leaving the recommendation against your advancement, would not be a material corrective action. They were unable to find you were never counseled about your misconduct. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not

recognize it as such when it is provided. Finally, the Board noted your rebuttal statement located in your record with the contested special evaluation clarifies that the misconduct cited in that evaluation is the same as that documented in the prior annual evaluation.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1610  
PERS-311  
17 May 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: EN2(SW/ANN) [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 March 1997 to 2 June 1997, E-6 advancement recommendation reinstated, and frocked to E-6 as of 15 June 1997.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did desire to submit a statement and his statement and reporting senior's endorsement are properly reflected in his record.

b. The member alleges the evaluation was submitted unjustly so promotion could be withdrawn as a form of punishment. The report is a Special/Regular report submitted to withdraw the member's recommendation for advancement. While the mark in block-36 has been lowered, the reporting senior may assign marks, as he feels appropriate in view of the member's conduct. The reporting senior stated his reasoning for submitting the special report. The report is procedurally correct.

c. Per reference (a), Annex D, paragraph D-9, a. (2) d. states: "Submit a special report if needed for an enlisted advancement cycle to: recommend a member for advancement who is not already in a recommended status; withdraw an advancement recommendation; or if a performance mark is needed to establish a PMA when no report which can be used for this purpose has been submitted in current rate."

d. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

[REDACTED]

Head, Performance  
Evaluation Branch



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

1430  
Ser 85/662  
6 Jun 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF  
EN2 (SW/AW) [REDACTED], USN, [REDACTED]

Ref: (a) BUPERSINST 1430.16D

Encl: (1) BCNR file #01779-00

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.

2. As stated in PERS-311 memorandum of 17 May 2000 the evaluation of 2 June 1997 was completed in accordance with current regulations. Therefore, relief can not be provided for Petty Officer [REDACTED]'s request.

[REDACTED]  
By direction